

**OFFICE OF ADMINISTRATIVE HEARINGS'  
BUDGET TESTIMONY ON ISSUES RAISED  
BY LEGISLATIVE ANALYST**

- 1. Recommendation by the Mandel Commission that MVA offer first offenders the option of requesting a work-restricted license via the mail with adequate proof of need instead of a hearing before the OAH.**

The Office of Administrative Hearings responded to the Mandel Commission and advised that the OAH must respectfully oppose any such recommendation. The OAH is of the opinion that adopting a position that allows any licensee who has been stopped for driving with a blood alcohol level greater than the legal limit to simply mail a form to the MVA in order to obtain a work-restricted license would be counterproductive to the State's past efforts to curb drunk driving and would be sending the wrong message to the general public. The OAH believes that providing for the "automatic" issuance of a work-restricted license, even if limited to first offenders<sup>1</sup> that adequately establish a need to drive for work purposes, would defeat the dual purposes of protecting the public from those who would drive while intoxicated and deterring those who would otherwise decide to drive while intoxicated.

Md. Code Ann., Trans. §16-205.1 imposes suspension sanctions on those who operate a motor vehicle with a blood alcohol content of .08 or more, or who refuse to submit to a chemical test to determine their blood alcohol level. It is designed to protect the public by reducing the risk to the public from those who have driven drunk and are awaiting criminal adjudication. It recognizes that the time period between a licensee's arrest for drunk driving and the licensee's appearance before a criminal court for that violation is a crucial time. It is a time when the criminal court has not yet had the ability to craft a structured program (including, but not limited to, fines, costs, supervised probation, mandatory alcohol treatment, incarceration, etc.) intended to prevent a reoccurrence of similar behavior by the licensee. Therefore, §16-205.1 seeks to impose suspension sanctions on those drivers to reduce the likelihood of those drivers from continuing to drink and drive.

Md. Code Ann., Trans. §16-205.1 is also designed to deter others from choosing to drive drunk. The time, expense and stigma of being required to attend a hearing where one's driving privilege could be suspended, as well as the actual suspension of one's driving privilege, all act to deter others from drinking and driving.

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<sup>1</sup> It should be noted that the Commission's recommendation relates to those licensee's subject to a 45-day suspension, and refers to those licensee's as "first offender." (p. 48). However, any licensee who has not previously violated § 16-205.1 by having a prior test result of .08 is subject to a 45-day suspension, even if that licensee has had one or more prior test refusals. The OAH presumes that the Commission does not intend such a licensee to be eligible for this proposed mail-in system.

Maryland, like many other states, has attempted to combat the scourge of drunk driving by enacting stiffer penalties for drunk driving and by lowering the level of alcohol in one's system at which one is to be considered under the influence or impaired. Twenty-five years ago, the blood alcohol level necessary to convict for intoxication was .15. It was reduced to .12, then reduced to .10 and now stands at .08. Sanctions for "failing" a test for alcohol concentration, or refusing to submit to such a test, have similarly been increased.

It appears that the Commission has concluded that all first offenders of Md. Code Ann., Trans. §16-205.1 with a blood alcohol level of .08 or greater should automatically be offered a work-restricted license upon presenting adequate proof of need. While the OAH concedes that many licensees request and attend hearings challenging their suspensions for the purpose of obtaining a work-restricted license, the OAH does not concede that all licensees who establish a need for a work restricted license are, or should be, granted such a license. The OAH contends that the exercise of sound judicial discretion must occur before a licensee is granted a work-restricted license. The Commission's recommendation fails to account for the host of factors that an Administrative Law Judge considers when exercising his/her discretion to issue a work-restricted license to a licensee who has been found to have violated §16-205.1. Some of those factors, which would not be considered in the Commission's proposed "automatic" mail-in system, are as follows:

1. The nature of the driving incident which led to the licensee's stop for driving while impaired or under the influence.
2. The test result indicating the licensee's bloods alcohol level at the time of the licensee's detention.
3. The age and driving experience of the licensee.
4. The licensee's prior driving record, including any record for prior alcohol-related offenses.
5. The licensee's actions since the incident in question, including any efforts by the licensee to obtain alcohol education and/or treatment.
6. The licensee's attitude and demeanor.
7. The licensee's ability to use alternative modes of transportation to attend work, school or alcohol education and or/treatment.

While the MVA could perhaps provide the exact numbers, OAH is of the belief that a large percentage of the licensees who are stopped for drinking and driving, especially those licensees whose actions and driving records are the most egregious, do not ask for a hearing. They elect to accept the 45-day suspension rather than undergoing the time, expense and stigma of attending a hearing in an attempt to obtain a work-restricted license. By implementing the Commission's recommendation, the OAH believes a greater number of licensees will seek a work-restricted license knowing that their prior actions and records will not be subjected to the scrutiny of an Administrative Law Judge.

- 2. It is recommended that the appeal fee imposed for OAH DWI/DUI license suspension cases be increased from the existing \$15 to \$125 in the Budget Reconciliation and Finance Act of 2004 so that the fee covers the OAH costs to handle these cases.**

The Mandel Commission recommended increasing the filing fee from \$15 to \$30 and the Governor, in the Budget Reconciliation Act, has recommended increasing the filing fee from \$15 to \$50. Attachment #1 is a schedule reflecting the actual fees collected in FY 2003 at \$15 each along with an estimate of fees to be collected under the Governor's proposal and the analyst's proposal, assuming the same number of hearing requests. The increase in the MVA filing fee to \$125 will probably reduce the number of hearing requests received by the OAH.

Funds collected from the filing fees are deposited into the General Fund. The OAH does not retain any of these funds.

- 3. One-grade Increase for Administrative Law Judges in Annual Salary Review (ASR)**

See Attachment #2.

Provided by Chief Administrative Law  
Judge Thomas E. Dewberry  
Office of Administrative Hearings

March 4, 2004

## ATTACHMENT #1

OFFICE OF ADMINISTRATIVE HEARINGS  
FEE ANALYSIS

	<b>FY 2003 # OF APPEALS</b>	<b>FY 2003 FILING FEES</b>	<b>ESTIMATED FILING FEES @ \$50</b>	<b>ESTIMATED FILING FEES PER ANALYST</b>
MVA-DWI/DUI	12,702	\$ 191,193	\$ 635,100	\$ 1,587,750
MVA-POINTS	8,955	\$ 134,885	\$ 447,750	\$ 1,119,375
CHILD ABUSE AND NEGLECT	863	\$ 12,978	\$ 43,150	\$ 43,150
MD INSURANCE ADMIN	410	\$ 6,470	\$ 20,500	\$ 20,500
MVA-CHILD SUPPORT REFERRAI	36	\$ 540	\$ 1,800	\$ 1,800
TAX INTERCEPT	13	\$ 195	\$ 650	\$ 650
CHILD SUPPORT-CONSUMER REPORTING	6	\$ 90	\$ 300	\$ 300
	22,985	\$ 346,351	\$ 1,149,250	\$ 2,773,525

NOTE: FEES PER ANALYST- \$125 FOR MVA POINTS AND DWI/DUI AND \$50 FOR ALL OTHER

## OFFICE OF ADMINISTRATIVE HEARINGS' ADMINISTRATIVE LAW JUDGES

**The Office of Administrative Hearings ("OAH") conducts fair and timely hearings in contested cases on behalf of state agencies. As such, it is an independent unit within the executive branch of State government. Not only has it centralized, it has also improved and reduced the costs of the administrative hearing process in Maryland Government.**

All Administrative Law Judges ("ALJs") of the OAH are cross-trained to hear many different kinds of cases. This allows OAH to consolidate regional dockets and to respond quickly to variations in volumes of case-types. It also results in the maximum utilization of ALJs which results in savings to the citizens of Maryland. In addition, all ALJs are certified mediators enabling them to provide mediation services in all case types.

### ***Why should ALJs get an increase in salary?***

- The low salary has adversely affected the morale and retention of judges at the OAH.
- The low salary has made it difficult for OAH to recruit more minority judges.
- The newly created Office of Administrative Hearings in Washington, D.C. is recruiting ALJs at a starting salary over \$80,000 posing a serious threat to the present composition of the OAH.

### ***What is an ALJ's workload?***

- ALJs issued an average of 61 written decisions and 400 bench decisions in FY 2003.
- The OAH scheduled 61,227 hearings in FY 2003, an average of 5,102 per month; of these, 35,126 required decisions by ALJs, and 421 were mediations or settlement conferences.
- In FY 2003, 97% of ALJs' decisions were issued on time.

### ***How does an ALJ's work compare to other administrative adjudicators?***

- An ALJ is responsible for making decisions for approximately 30 state agencies involving different regulations and laws, in every county and Baltimore City, and in over 225 different areas of the law.
- Other administrative adjudicators issue decisions in only one area of the law.
- A new ALJ comes to the job with an average of fifteen years of experience, an amount comparable to other administrative adjudicators.

### ***How much are ALJs paid?***

- The starting salary for ALJs is \$59,617; maximum salary, after 18 years, is \$86,118.
- The Chief Administrative Law Judge makes \$101,000.

### ***How does an ALJ salary compare with that of other state legal positions?***

- An ALJ is paid a fraction of the salary of the judiciary.

- An ALJ's retirement pay is extremely limited as compared to that of the judiciary and the Workers' Compensation Commission.
- In comparison with the Attorney General's office, Assistant Attorneys General regularly practice before ALJs and are paid at a higher salary.

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